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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-215
Rate Regulation	)	

COMMENTS OF CABLE OPERATORS AND ASSOCIATIONS

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JOINT COMMENTERS' SUMMARY[1/]

Pursuant to Congressional mandate, the Commission is now faced with the task of regulating rates for the provision of cable service in markets not "effectively" competitive. Rate regulation has existed in many forms at state and federal levels for almost one hundred years with regards to traditional public utilities (electricity, gas, telephone as well as other statutory monopolies (transit)). The rules governing traditional utilities, however, do not reflect the unique nature and operation of the cable industry which must be recognized when establishing principles for cable rate regulation and essential to a proper balancing of subscriber and investor interests.

Whatever form of rate regulation the Commission imposes on cable system operators must not contravene the Fifth

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1/ The participating cable operators include: KBLCOM, Inc., Century Communications Corp., Jones Intercable, Inc., Scripps Howard Cable Company, TeleCable Corporation, Bresnan Communications Corp., Greater Media, Inc., Monmouth Cablevision Associates, Rifkin & Associates, Simmons Communications, Inc., Western Communications Alaskan Cable Network, Inc., Allen's Television Cable Service, Inc., Brownwood Television Cable Service, Inc., CableAmerica Corp., CableSouth, Inc. Cable USA, Inc., Columbus TV Cable Corp., Coosa Cable Company, Inc., Corsicana Cable TV, Gilmer Cable Television Co., Inc., Grassroots Cable Systems, Inc., Halcyon Communications, Inc., Helicon Corp., James Cable Partners, OCB Cablevision, Inc., Phoenix Leasing, Inc., Rock Associates, Satcom, Inc., Sjoberg's, Inc., Starstream Communications, Sweetwater Television Company, United Video Cablevision, Inc., Zylstra Communications Corp. The participating state associations include: Cable Television Assn. of Georgia, South Carolina Cable Television Assn., Tennessee Cable Television Assn., Texas Cable TV Assn.

Amendment's ban on confiscation of property devoted to the public use. While a number of general rules for avoiding confiscation of utility property have developed over the years in connection with other regulated industries, imposing rate regulation on cable system operators for the first time raises several special concerns that do not arise in the case of mature, long-regulated industries like electric power and telephony. The Commission must address these concerns, noted below, in its cost-of-service rules for cable rates. The Commission must also allow reasonable transitional rules to avoid punitive revenue decreases at this critical industry juncture, when cable companies are undertaking infrastructure upgrades such as optical fiber deployment and conversion from analog to digital signalling, and preparing for competitive onslaughts from well-financed telephone companies and other new entrants into video programming.

The first major "transitional" concern is that cable is a new industry that has gone through a period of major capital additions over the last decade. Rather than set very high initial rates to cover these start-up losses and minimal earnings, cable operators acted on the reasonable expectation that such losses and low earnings would be recouped in the future as their systems expanded and penetration increased. The prices paid for cable systems in the 1980s generally reflected the sellers' recoupment of early losses and deferred earnings and not any expectation of monopoly profits. It would be confiscatory for the Commission to set rates today that failed to recapture those initial losses and low earnings or that otherwise failed to reflect the true amount of capital invested in cable systems over the years whether called "acquisition premiums" or "intangibles." As a result, an allowance for these amounts must be made in establishing cable operators' regulated rate bases regardless of denomination of certain of such amounts as "premiums" or "intangibles."

Once the Commission has properly established a cable operator's ratebase, it must also allow a fair and reasonable return on that ratebase. In doing so, the Commission must recognize that the risks facing cable operators are higher than those facing mature, established businesses like the S&P Industrials, and much, much higher than those facing established, regulated utilities like telephone and electric companies. The Commission's approach to determining a reasonable rate of return for cable companies, therefore, must adequately reflect this higher risk, whether by allowing a risk premium over and above the returns for the regulated returns on telcos or on assessing relative comparables in related markets.

Unfortunately, the methodology favored in the NPRM - the classic Discounted Cash Flow (DCF) approach - cannot reasonably be applied to cable operators, because even publicly traded cable firms typically do not pay dividends, and firms with both a history and future prospects of paying regular dividends cannot reasonably be viewed as "comparable" to cable firms for purposes of estimating the cost of capital, unless proper adjustments are made. Consequently, an approach that allows the risk of cable firms to be estimated based on changes in stock price alone - must be used and AUS finds a range of 18-19% appropriate. This approach clearly shows that cable operators are substantially riskier than the market as a whole. As a check, the telco rate of return (11.25%) can be adjusted to pretax (17%) then adjusted to reflect the riskiness derived from the beta comparisons of publicly traded cable stocks, adding approximately 350 basis points as a result of the variation in the betas, or an authorized return of approximately 22% on a pretax overall basis.

The Commission also sought comment on prescribing cable depreciation rates. The relative immaturity of cable as an industry, and the rapid technological changes to which it is subject, compel the conclusion that the Commission should not, at this time, attempt directly to regulate cable depreciation rates. Instead, the Commission should do no more than monitor cable depreciation practices to assure itself that depreciation expense is not being manipulated to justify higher rates in a cost-of-service showing. In this regard, while the Commission is <u>required</u> by Title II of the Communications Act to affirmatively <u>prescribe</u> telephone company depreciation rates, no such requirement exists in the portions of the Communications Act relating to cable. As a result, imposing detailed regulation of depreciation rates, without a specific statutory command to do so, would be inconsistent with Congress's admonition that cable rate regulation not duplicate Title II telephone company regulation.

The NPRM also addresses the question of allocating costs among different programming tiers, and advocates a form of "tier neutrality," supposedly to avoid creating an incentive for operators to move popular programming from Basic to more expensive tiers. Joint Commenters propose that the Commission allocate costs directly to the extent possible, but for costs that cannot be directly or causally assigned to a particular tier, consider either the number of channels in each tier, the number of subscribers or weigh either number to reflect the penetration in each tier. While slightly more complex than the allocation methodology advanced in the NPRM, this proposal fairly assigns costs without creating unduly high rates for non-basic tiers, and allows for flexibility given the unique nature of the services offered on each tier.

The Commission's resolution of the relevant issues requires expansive analysis and due consideration of moving an entire -- and highly individualized -- industry into a regulated environment. The cable industry has gone through a rather intense maturation process from its initial conception as 12-channel "antenna service" in the '50s and '60s through microwave and satellite delivered superstations and cable programming networks in the '70s and '80s to the hundred channel, fiber-optic digitally compressed subscriber-interactive multimedia systems on the brink converging in this and the next decade. Recognizing the diversity of the industry and its contribution will promote the development of the telecommunications infrastructure and deployment of new consumer services. The environment cannot be hostile and constitutionally must be compensatory. In this proceeding the Commission has the opportunity and obligation to recognize and implement due protections for the cable operators and subscribers.

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Exhibit F

AUS Consultants:
White Paper On Recommended Regulation For
The U.S. Cable Television Industry

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COMMENTS OF CABLE OPERATORS AND ASSOCIATIONS[1/]

On behalf of the cable television operators and state cable associations listed in footnote 1, we submit the following comments in response to the Commission's Notice of Proposed Rulemaking on proposed cost-of-service requirements to be implemented as part of the Commission's overall rate regulation for cable television operators.[2/] The MSOs participating in these

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1/ The participating **cable operators** include: KBLCOM, Inc., Century Communications Corp., Jones Intercable, Inc., Scripps Howard Cable Company, TeleCable Corporation, Bresnan Communications Corp., Greater Media, Inc., Monmouth Cablevision Associates, Rifkin & Associates, Simmons Communications, Inc., Western Communications Alaskan Cable Network, Inc., Allen's Television Cable Service, Inc., Brownwood Television Cable Service, Inc., CableAmerica Corp., CableSouth, Inc. Cable USA, Inc., Columbus TV Cable Corp., Coosa Cable Company, Inc., Corsicana Cable TV, Gilmer Cable Television Co., Inc., Grassroots Cable Systems, Inc., Halcyon Communications, Inc., Helicon Corp., James Cable Partners, OCB Cablevision, Inc., Phoenix Leasing, Inc., Rock Associates, Satcom, Inc., Sjoberg's, Inc., Starstream Communications, Sweetwater Television Company, United Video Cablevision, Inc., Zylstra Communications Corp. The participating **state associations** include: Cable Television Assn. of Georgia, South Carolina Cable Television Assn., Tennessee Cable Television Assn., Texas Cable TV Assn.

2/ The Notice of Proposed Rulemaking, released July 16, 1993 ("NPRM"), followed the Commission's earlier Report and Order

[Footnote continued]

comments own and operate cable television systems throughout the country and the participating associations represent cable television operators in the various states.3/

I. INTRODUCTION

The NPRM seeks comment on the establishment of rules to govern cost-of-service showings by cable operators who seek to justify rates above the benchmarks previously adopted by the Commission. In the NPRM the Commission seeks comment on (a) the appropriate standards to govern cost-of-service showings; (b) proper methods to determine the ratebase; (c) methods for calculating a reasonable rate of return; (d) the adoption of expense accounting, cost allocation, depreciation, and amortization principles for the cable industry; and (e) suggestions for

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[Footnote continued]

establishing a system of pricing benchmarks prescribing rates for cable systems not subject to effective competition. Report & Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-127, 58 FR 29756 (May 21, 1993).

3/ These comments and proposals are without prejudice to the arguments Century Communications Corp. has separately made in its petition for reconsideration at the Commission and its petition for writ of mandamus in the U.S. Court of Appeals for the District of Columbia Circuit. For the reasons set forth in those pleadings, Century maintains that cost-of-service regulation is unlawful under the 1992 Cable Act. In the event that cost-of-service regulation is appropriate, these comments reflect Century's views as to the specific deficiencies in the Commission's proposal, and how those deficiencies should be corrected.

streamlining the entire approach for determining cost-of-service rates. It is the Commission's introduction of this latter concept in the NPRM which we believe should be fully explored. Streamlining, if accomplished equitably, can reduce the inevitable logjam of complex cost-of-service cases while allowing cable operators to maintain their financial viability.

In these comments, Joint Commenters address each of these issues in detail, propose methods and procedures for properly allowing cable operators to recover the costs of providing service while protecting consumers from perceived excessive rates. The Joint Commenters have exhaustively researched their own operations and conducted studies of the relevant economic issues and precedent. To that end, we attach as exhibits various historical and financial exhibits supporting our proposals (Exhibits A-E), and a comprehensive report prepared by AUS Consultants ("AUS Report") (Exhibit F) recommending an overall approach to implementing cost-of-service regulation.

Taken together, these comments, the AUS report and analyses all demonstrate that traditional common carrier regulation cannot be blindly applied to the cable industry. The Commission noted Congress' intent that cost-of-service "will not replicate Title II regulation."[4/] Over the many years of rate

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4/ NPRM ¶ 15 at n.16; <u>see</u> House Report 102-628 at 83.

regulation the Commission has developed and applied many complex procedural and substantive rules. Rote application of these rules to cable operators would be inappropriate and disserve the policies of the 1992 Cable Act by unduly restricting and complicating cable operators' operations without any corresponding benefit to subscribers, except for perhaps short-run low (but confiscatory) rates. In adopting cost-of-service standards, the Commission should be guided by the following precepts:

- **There must be an adequate transition phase.**
- **There must be sufficient incentives for cable to continue developing the telecommunications infrastructure.**
- **Higher risks demand higher returns.**
- **A "benchmark plus" approach would streamline the entire process.**

The Commission has also stated that it intends the cost-of-service requirements to be a "backstop" for the benchmarks. NPRM ¶ 7. However, the benchmarks were derived solely from prices established in certain overbuild markets.[5/] The benchmarks are therefore not reflective of costs of actually providing cable service, and rates established through cost of

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5/ The benchmarks are premised on an untested assumption that businesses operating in the overbuild and low penetration markets sampled were earning a reasonable return on investment, despite overwhelming evidence to the contrary, including the collapse of some of the very survey markets falsely assumed to be in equilibrium.

service showings thus would have no special relationship to the benchmark rates. Indeed, no specific benchmark could accurately reflect cost elements except by pure chance.

If cost of service standards were designed merely to match the outcome of benchmarks, they will provide no substantive protection and will merely perpetuate flaws in benchmarks which constitutionally necessitated the alternative route to cost recovery as proposed in this proceeding. Congress could not, after all, direct the Commission to confiscate cable operators' property in the name of administrative simplicity. Accordingly, to protect against confiscation, the Commission must provide cable operators the opportunity to show that the benchmark pricing system does not permit a fair return on the costs incurred and capital committed for the operation of the cable system. A result-oriented cost of service methodology designed to mirror the output of benchmarks would make the entire set of rate regulations fall of their own weight.

The difficulty inherent in subjecting a previously unregulated industry -- one affirmatively *de*regulated -- to utility-type regulation makes the rote application of traditional cost-of-service precepts somewhat difficult. The diversity in cable systems, capital structures, accounting practices, record keeping procedures, maturity, penetration and geographic location all impact the "cost" of service, as well as the identification of the appropriate cost factors. Proper constitutional recognition of identifiable and real cost elements requires the opportunity be made available to quantify *all* costs related to the provision of cable television service, lest regulatory confiscation occur. Notwithstanding these requirements, practical and rational regulation without the complexity and difficulty associated with detailed cost of service analyses can be achieved by adhering to the principles discussed below.

II. PROPER TRANSITION ADJUSTMENTS AND AN APPROPRIATE TRANSITION PERIOD WILL FULFILL THE PURPOSES OF THE CABLE ACT, GUARANTEE EXPANSION OF SERVICES AND ALLOW CABLE OPERATORS TO MAINTAIN FINANCIAL VIABILITY

A. Regulated Rates Cannot Be Confiscatory

The entire premise for utility-type regulation has been the absence of competition and a social decision for a statutorily endorsed monopoly whose prices must be controlled by public officials, not corporate entrepreneurs. Most believe the principles of rate regulation should achieve socially desirable results by "mimicking" the effect of a competitive market.[6/] However, in purely competitive markets, much socially undesirable conduct -- such as price discrimination -- abounds.[7/] Yet for

6/ "Public utility regulation, if chosen in preference to outright public ownership, is therefore said to be a substitute for competition." Bonbright, Principles of Utility Rates, p. 10 (5th ed. 1969); see also Kahn, The Economics of Regulation, Vol. 1, p. 20 (1970).

7/ The Commission has previously found the price differentials are *evidence* of competition. Competitive Carrier Rulemaking, 85 FCC 2d 1, 31 (1980).

regulated entities, price discrimination is prohibited.[8/] Similarly, pure cost-driven notions of competitive pricing, while theoretically appealing, do not reflect actual decisions by competitive entities.

> [T]he very nature of a monopolistic public utility is such as to preclude an attempt to make the emulation of competition very close. The fact, for example, that theories of pure competition leave no room for rate discrimination, while suggesting a reason for viewing the practice with skepticism, does not prove that discrimination should be outlawed. And a similar statement would apply alike to the use of an original-cost or a fair-value rate base, *neither* of which is defensible under the theory or practice of competitive pricing.[9/]

The development of the cable industry has clearly been the result of entrepreneurial initiatives, business acumen and assumption of risks attendant to building and developing what has become a world-envied video entertainment industry. Original costs, while important, were not the only factor in determining ultimate prices. While the industry was developing, encouraging increased subscribership, expanding channel capacity and providing innovative services, losses were incurred, profits deferred and

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8/ See generally Cable Television Consumer Protection & Competition Act, Pub. L. No. 102-385, § 3(d) 106 Stat. 1460 (1992) ("1992 Cable Act") 47 U.S.C. § 623(d) (requiring cable operators to have uniform rate structure); 47 U.S.C. § 202(a) (prohibiting discrimination in like services delivered by regulated communications common carriers).

9/ Bonbright, at 107 (emphasis in original).

capital routinely reinvested.[10/] The unique operation of the industry must be considered in developing the appropriate competitive market to be mimicked, or the impact of the Commission's policy will simply be to strip the industry of its value.

In order to transition to full regulation -- with the expectation that effective competition will develop shortly causing instant deregulation -- the Commission must move cautiously. Other aspects of the 1992 Cable Act were designed precisely to ensure the vitality and growth of competing multi-channel video programming distributors and alternative technologies. The trade press contain a plethora of stories on the growth of wireless cable, the development and deployment of new high-powered DBS competitors to cable, and telephone company entry into cable.[11/] With the expectation that the advent of effective competition has been accelerated by the 1992 Cable Act, and recent decisions easing MFJ and Cable Act restrictins, the need for a transitional mechanism to protect investors from even the temporary dislocation of the cable industry is needed so competition will be

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10/ See generally Exhibits A and B detailing the acquisition, expansion and financials of cable systems owned by two of the Joint Commenters, KBLCOM and Rifkin. These exhibits are more fully discussed infra at § III(E)(1).

11/ The day before this filing, the U.S. District Court sitting in Alexandria struck down the Cable Act's cross-ownership provisions, allowing unrestricted telco entry into cable television in telco service areas. Chesapeake and Potomac Tel. Co. of Virginia United States, Civil No. 92-1751-A (E.D. Va. August 24, 1993).

effective for all in the video entertainment market, not artificially restrained by regulation targeted at one member.

Cable systems built their value by delivering a highly competitive service -- entertainment -- over what Congress believed were monopoly facilities. But these facilities are worthless if the subscriber is not obtaining a valued service. And as studies have shown, subscribers are quite sensitive to the value of the service bought over a cable system.[12/] No cable operator will construct facilities and make the necessary investment to provide service if he could not obtain a fair return on that investment. In point of fact, this principle is the guide for review of rate regulation based on cost-of-service principles: the regulated entity must be permitted an opportunity to earn a fair rate of return on its investment and reward its investors commensurate with similarly situated competitive and risk intense industries.

B. Constitutional Fundamentals

There are significant constitutional requirements governing rate regulation.[13/] The Supreme Court has pronounced that

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12/ For example, there is considerable elasticity of demand for cable services reflected in the fact that the penetration in the cable industry nationwide is 60 percent of homes passed with televisions, whereas traditionally regulated utilities such as telephone are over 90 percent and electricity nearly 100 percent of all homes.

13/ The United States Supreme Court long has held that a rate set by a regulatory agency is too low if it is "so unjust as

[Footnote continued]

if the total effect of the rates imposed are not unreasonable then the method or methods utilized in arriving at those rates is constitutionally sound.14/ Recognizing that this simple result-oriented tautology cannot survive alone, the Court explained that this precept

> of course, does not dispense with all of the constitutional difficulties when a utility raises a claim that the rate which it is permitted to charge is so low as to be confiscatory: whether a particular rate is 'unjust' or 'unreasonable' will depend to some extent on what is a fair rate of return given the risks under a particular ratesetting system, and on the amount of capital upon which the investors are entitled to earn that return. At the margin, these questions have constitutional overtones.

Duquesne Light Co., 488 U.S. at 310.

[Footnote continued]

to destroy the value of [the] property for all the purposes for which it was acquired", and in so doing, "practically deprive[s] the owner of property without due process of law." Covington & Lexington Turnpike Road Co. v. Sanford, 164 U.S. 578, 597 (1896); see Duquesne Light Co. v. Barasch, 488 U.S. 299, 307-08 (1989). The Court, moreover, has stated that "[b]y long standing usage in the field of rate regulation the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense." F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 585 (1942). Accordingly, if a "rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth . . . Amendment[]." Duquesne Light Co., 488 U.S. at 308.

14/ See e.g. Natural Gas Pipeline Co., 315 U.S. at 586.

The Court has repeatedly held that no single rate-making theory is constitutionally required and that eliminating other theories for determining reasonableness of rates would itself be constitutionally infirm.15/ Accordingly, the methods chosen must accommodate the unique circumstances of the industry subject to regulation, but the ultimate evaluation of the impact of the rate must depend on the return investors require given the risk of the enterprise.16/ While Congress did direct that in setting rates the Commission should evaluate consumer interests as the goal of ratemaking,17/ the Constitution mandates more; it requires consideration of the investors' and the regulated entity's interests.18/ Congress cannot direct an

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15/ "The adoption of a single theory of valuation as a constitutional requirement would be inconsistent with the view of the Constitution this Court has taken . . . The designation of single theory of rate making as a constitutional requirement would unnecessarily foreclose alternatives which could benefit both consumers and investors." Duquesne Light Co., 488 U.S. at 316 (citation and footnote omitted).

16/ See generally AUS Report at 8-20. Rates must afford the utility the ability to operate successfully, maintain its financial integrity, attract capital, and compensate its investors for risks assumed in the undertaking. FPC v. Hope Natural Gas, 320 U.S. 591, 603 (1944). Utility investors must receive a return "equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are tended by corresponding risks and uncertainties." Bluefield Water Works and Improvement Co. v. Public Serv. Comm'n, 262 U.S. 679, 692-93 (1923). See also Hope, 320 U.S. at 603.

17/ 1992 Cable Act § 3(b)(1), 47 U.S.C. § 623(b)(1). Even the Act's reference to allowing a "reasonable profit" for cable operators is limited by the Commission's "obligations to subscribers." Id., § 623(b)(2)(c)(vii).

18/ "Thus, there is a zone of reasonableness within which rates may properly fall. It is bounded at one end by the investor

[Footnote continued]

agency to ignore the balance or tip it in favor of consumer interest. And a system designed to reflect pricing benchmarks derived entirely from non-cost considerations cannot as a "single theory" constitutionally rescue cost-of-service requirements which do not allow sufficient returns to investors.

The Commission in this proceeding is confronted with the difficult task of setting rates that maintain and allow continued improvement in the operational and financial integrity of the business, enable cable operators to continue to attract capital and fairly compensate investors, and continue to enhance service offerings. This task is all the more complicated by following the NPRM and attempting to compare cable television systems in different regions, different states of development and with different technologies when the bases for such cost of service comparisons may not exist. Although the Commission possesses discretion to set cable rates and establish cost of service standards, the ultimate result of the Commission's rate and standard setting process must be reasonable to survive constitutional scrutiny.

[Footnote continued]

interest against confiscation and at the other by the consumer interest against exorbitant rates." Washington Gas Light Co. v. Baker, 188 F.2d 11, 15 (D.C. Cir. 1950), cert. denied, 340 U.S. 952 (1951).

Beyond stark constitutional minimums below which the Commission cannot fall in setting cost of service standards, the lowest non-confiscatory rate rarely will be the most socially beneficial rate. Harm to the investor may cause some short-term, short-lived public interest gain in the form of lower rates, but it also may ultimately cause greater harm in the long run because of damage inflicted on the cable operator's ability to provide service to the public. Excessively low rates caused by (a) not permitting cable operators to recover their expenses, (b) a ratebase inaccurately reflecting cable operators' investment in its plant and operations, or (c) an inadequate rate of return, may be constitutionally permissible if a reviewing court deems the ultimate result non-confiscatory, but the rates so set would be bad public policy. The Commission must correctly account for acquisition premiums in the rulemaking process just to reach the lowest level of constitutionally permitted rates. The Joint Commenters welcome the opportunity to compete fairly in the multichannel video programming marketplace, and to provide high quality rate regulated service to all cable subscribers. If, however, the Commission sets rates at an unreasonably low level, the public interest will be harmed simply because cable will be unable to provide quality service or develop the robust cable-based telecommunications infrastructure, whether or not the ultimate result of the ratemaking process barely satisfies the constitutional test.

C. Transition To A Regulated Environment Requires A Careful Balance Of Ratepayer And Investor Interests

Avoiding confiscation is made all the more difficult by Congress' attempt to micromanage the essential operations of cable systems by legislating program selection, tiering, customer service as well as the pricing of equipment and services. In the NPRM, the Commission indicated that other regulatory agencies have adopted interim measures "balancing consumer and regulated company interests" to facilitate important changes in the manner in which the industry is regulated. NPRM at 13 n.21. The Commission specifically cited a 1992 Order of the Federal Energy Regulatory Commission ("FERC"), in which that agency adopted certain interim transitional measures, including permission to renegotiate and cancel contracts to expedite transition into the new regulatory environment.[19/] In that order, the FERC also

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19/ See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 F.R. 13,267, 13,304 (F.E.R.C. Apr. 16, 1992). A number of other tribunals have recognized the need for intelligently crafted measures to ease transitions into new regulatory environments. See, e.g., Farmers Union Central Exchange, Inc. v. F.E.R.C., 734 F.2d 1486, 1517-18 (D.C. Cir. 1984), cert. denied, 469 U.S. 1034 (1984); Order Instituting Investigation Into Rate Design For Unbundled Gas Utility Services, 109 P.U.R. 4th (Cal. P.U.C. 1988)(synopsis, full text unpublished)(transition costs incurred on behalf of ratepayers to be recovered from ratepayers); Petition of Southwestern Bell Tel., Inc., 1986 Tex. P.U.C. LEXIS 111, *72 (1986) (acknowledging that post-transfer retention of pre-transfer private line rate structure necessary for transition to a new rate structure).

recognized that the sweeping industry changes produced by the new regulatory environment imposed additional costs on the regulated businesses, and that gas pipelines need to recover those costs. Id. at 13,307. The cable industry, among other measures, should be compensated for the costs it incurs in undergoing this transformation and allowed to enter it gradually, especially given the ultimate aim that regulation will be replaced shortly by "effective" competition. See AUS Report at 20-25.

The essential difference between the transitioning required in the FERC context and that required in the implementation of the Commission's cost of service rules, is that the gas industry was operating (and had been for generations) in a highly regulated environment and was transitioning into a substantially deregulated environment. The cable industry, of course, is headed in the opposite direction, if only for a short time. The public interest demands, therefore, significant and meaningful transition phase measures to allow the cable industry to manage this transformation. **This transition period is needed whether competition develops tomorrow or in ten years, and that same transition minimizes the negative impact of rate regulation on the ability of cable firms to prepare for it.** Whatever cost of service methodology and appropriate transitioning measures the Commission adopts, therefore, must make sufficient allowances for the costs to cable operators in coping with this change to their businesses.